IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 438 of 2004.

Reserved on: 23.4.2004.

Decided on: 15.05.2007.

M/s Asia Resorts Ltd.

… … … Petitioner.

Versus

The Principal Secretary (Labour) & Others .

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner: **Mr. R.L. Sood, Sr. Advocate with Ms. Sanjivini Sood, Advocate.**

For Respondents No.1, 2 & 4: **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocates General.**

For Respondent No.3: **Mr. B.M. Chauhan, Advocate.**

Rajiv Sharma, Judge:

This petition has been filed against the award dated 27.4.2004 announced by the Presiding Judge, H.P. Labour Court, Shimla in reference No.171 of 2000.

Whether reporters of local papers may be allowed to see the judgment? Yes.

The State Government had made the following reference for adjudication to the Labour Court:-

> **"Whether the resignation obtained from Shri Ram Lal Chauhan by the management of M/s Asia Resorts Ltd., Timber Trail Resort, Parwanoo, District Solan, H.P. under influence and withholding the full settlement of his claim, as alleged, is legal and justified. If not to what relief of service benefits and amount of compensation/full settlement of his claim, Shri Ram Lal Chauhan is entitled?"**

In sequel to reference No.171 of 2000, respondent No.3-workman has filed claim petition (Annexure P-10). The petitioner-management has filed written statement (Annexure P-11). The respondent No.3-workman had appeared as PW-1 and Shri Dinesh Pant and Shri Rajeev Kapil had appeared as RW-1 and RW-2 respectively on behalf of the Management.

The learned Labour Court had answered the reference partly in favour of respondent No.3-workman to the following effect:-

> **"As a sequel to my findings on issue NO.1, it is held that resignation of the petitioner by respondents was not obtained under undue influence and it is held further that withholding of full and final settlement of claim of the petitioner is not legal and justified and the petitioner is entitled to recover a sum of Rs.35,260/- with interest @ 9% per annum from 1.4.2000 till its realization and costs of the petition which are quantified at Rs.2000/-. The reference is partly answered in favour of the petitioner. Let a copy**

of this award be sent to appropriate Government for publication in the official gazette."

I have perused the record carefully and have heard the parties.

I have gone through the reference made vide Annexure P-9, dated 10th November, 2000 as well as the claim petition filed by respondent No.3-wrokman and the written statement filed thereto by the petitioner.

The Labour Court has come to definite conclusion that though the petitioner-management had issued a cheque for balance amount of Rs.35,260/-, but the payment of same was subsequently stopped. The Labour Court has also recorded the finding that the Management has not placed on record as to what balance amount the workman was entitled to. The explanation of the Management that the cheque was issued in excess of entitlement was not found satisfactory by the Labour Court since nothing had been placed on record by the Management to show the entitlement of the workman. It was in these circumstances that the Labour Court has held the workman entitled to the balance amount of Rs.35,260/-.

During the course of arguments the learned Senior Advocate, Mr. R.L. Sood appearing on behalf of the Management and Mr. B.M. Chauhan, Advocate appearing on behalf of the workman have raised their submissions with regard to the sum of Rs.4,000/-. Mr. Rakeshwar Lal Sood, Senior Advocate has submitted that the workman was to pay a sum of Rs.4,000/- to

the Management at the time of his resignation. This contention was contested by Shri B.M. Chauhan. This question has not been contested by the Management in the perspective in which it is being contested before this Court. The plea with regard to whether the Management was entitled to a sum of Rs.4,000/- or not should have been contested before the Labour Court.

The learned Labour Court after going through the entire pleadings and on the basis of statements made by the representatives of the management and respondent No.3-wrokman has come to the just conclusion that the workman was entitled to a sum of Rs.35,260/-.

The Hon'ble Supreme Court in **Calcutta Port Shramik Union v. The Calcutta River Transport Association and others AIR 1988 Supreme Court 2168** has held that the interference in the awards passed by the Industrial Tribunals by the High Courts should not be on hyper-technical grounds. Their Lordships have opined as under:-

> **"The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals**

> **instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."**

It is settled proposition of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the Labour Court. The Hon'ble Supreme Court has also held in **Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and Another (2000) 4 SCC 245** that exercising the powers under Articles 226 and 227 of the Constitution, the interference with pure findings of facts and re-appreciation of the evidence is held to be impermissible. It was also held that even insufficiency of evidence or if another view is possible is no ground to interfere with the findings of the Industrial Tribunal. Their Lordships have opined as under:-

> **"The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be**

> **considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."**

The Hon'ble Supreme Court has again considered this aspect in **Sugarbai M. Siddiq and Others versus Ramesh S. Hankare (dead) by LRs. (2001) 8 SCC 477** and has held that scope of the powers of High Court is concerned not with the decision of the lower court/Tribunal, but with its decision making process. High Court must ascertain whether such Court or Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, and then only the High Court can interfere with otherwise not. Their Lordships have held as under:-

> **"There can be little doubt that in an application under Article 227 of the Constitution, the High Court has to see whether the lower Court/tribunal has jurisdiction to deal with the mater and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision-making process. On this ground alone the order of the High Court is liable to be set aside."**

In view of the law laid down by the Hon'ble Supreme Court, this Court will not re-appreciate the evidence since the same has already been appreciated by the Labour Court.

The up-shot of the above discussion is that there is neither any jurisdictional error nor any procedural irregularity in the award dated 27.4.2004 and the same is accordingly up-held.

Consequently, this petition is dismissed with costs quantified at Rs.10,000/-.

(Rajiv Sharma)
Judge

May 15, 2007
(sck).